



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Virginia Waste Management Board
VAC Chapter Number:	9 VAC 20-130-10 et seq.
Regulation Title:	Old Title: Regulations for the Development of Solid Waste Management Plans New Title: Regulations for Solid Waste Management Planning , Amendment 1
Action Title:	Adoption of Final Regulations
Date:	May 7, 2001 DRAFT

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

On May 7, 2001, the Virginia Waste Management Board amended its regulations governing solid waste management planning. These regulations require that all cities, counties, and towns in the Commonwealth develop revised solid waste management plans. These plans can be developed individually or as part of an approved region. Substantive changes in this amendment include:

- Submission of completely revised solid waste management plans are required by July 1, 2004;

- The recycling rate calculations were redefined and include a minimum recycling rate of 25%, the rate established by statute;
- An annual report on the amounts of waste generated is required from permitted solid waste facilities (as required by statute), and an annual report on the recycling rate is required from each city, county, and town, or solid waste management planning region; and
- A system was incorporated requiring that the solid waste management plans to be amended if changes occur and that the amendments must be approved prior to implementation. The amendments are classified as either major or minor depending on their impact. Major amendments require public participation prior to submission for approval by the department. Minor amendments can be submitted directly for processing without a public hearing.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On May 7, 2001, the Virginia Waste Management Board approved the promulgation and adoption of final regulations, Regulations for Solid Waste Management Planning, Amendment 1, (9 VAC 20-130-10 et seq.) pursuant to Chapter 14 (§ 10.1-1400 et seq. and specifically §§ 10.1-1402, 1411, and 1413.1) of Title 10.1 of the Code of Virginia.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

Section 10.1-1411, the Virginia Waste Management Act contained in Chapter 14, Title 10.1, Code of Virginia, requires that cities, counties and towns of the Commonwealth develop solid waste management plans for their jurisdiction and include provisions to achieve the statutory recycling goal of 25%. The Board is authorized to promulgate regulations specifying requirements for these plans and to review and approve the plans. The local governments may unite with other jurisdictions in a regional plan if the Governor approves the region. Other parts of the Act require that no permit for a solid waste management facility shall be issued until the local or regional applicant has a solid waste management plan approved by the Board in accordance with the regulations. In fulfillment of these responsibilities, the Board adopted

Regulations for the Development of Solid Waste Management Plans, 9 VAC 20-130-10 et seq. (1990).

Section 10.1-1413.1.A, the Virginia Waste Management Act requires that the Department of Environmental Quality report by June 30 of each year the amount of solid waste disposed of in the Commonwealth. Section 10.1-1413.1.B requires that all permitted facilities that treat, store or dispose of solid waste provide the department, on an annual basis, the information necessary to complete the report.

The text of the cited authority can be located through <http://leg1.state.va.us> under the searchable database for the Code of Virginia at the sections noted.

The Office of the Attorney General has certified that the Virginia Waste Management Board has the statutory authority to promulgate the regulation and that it comports with applicable state and/or federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The Department of Environmental Quality (the department) has recommended amendment of the Regulations for the Development of Solid Waste Management Plans (9 VAC 20-130-10 et seq.) because more than nine years have passed since the adoption of the regulations, there have been three statutory changes since then, and it is necessary to consider what changes are appropriate to the regulations to coordinate with the statutory changes. It is essential to the public safety that solid waste be managed properly throughout the Commonwealth. Improper solid waste management could cause immediate public health problems due to disease or vector increase. There could also be long-term problems such as surface water, groundwater, and soil contamination.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

The new substantive provisions of this amendment and the substantive changes to existing sections include the following:

- Completely revised solid waste management plans are to be submitted to the department by July 1, 2004 by each planning jurisdiction;
- The recycling rate calculations are newly defined, and a standard form for calculating the recycling rate is provided. Each locality or region must report on their recycling rate by April 30 of each year;
- Permitted facilities must submit a report on solid waste managed in the Commonwealth by March 31 of each year;
- In accordance with Va. Code § 10.1-1411, no permit for a solid waste management facility may be issued until the local or regional applicant has a solid waste management plan approved by the Board; and
- Periodic updates of solid waste management plans are replaced with a system of amendments. These amendments must be approved by the department prior to implementation.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

Primary advantages to the public and the Commonwealth are:

- Better planning for the handling and disposal of solid waste;
- Consistency with the statutory recycling rate, and consistent reporting of results;
- Improved tracking of the solid waste handled in the Commonwealth; and
- Solid waste management plans that are updated as required rather than on a fixed time schedule.

There are no known disadvantages to the public or the Commonwealth; however, planning jurisdictions may incur additional costs for more detailed planning.

Matters of particular interest to the regulated community are:

- Efforts needed to prepare the complete, revised plans required by this amendment;
- Increased reporting requirements for solid waste tracking and recycling; and
- The requirement to have plan amendments approved before they are implemented.

Primary advantages to the agency:

- Improved tracking of the solid waste handled in the Commonwealth;
- Improved reporting on the recycling effort; and
- Solid waste management plans that are constantly up to date.

The disadvantage to the agency will be the increased resources necessary to review the plans and implement other requirements of the regulations.

Statement of Changes Made Since the Proposed Stage

Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.

Several definitions were changed including the addition of used oil filters and used antifreeze to the definition of Supplemental Recyclable Materials. Used oil filters and used antifreeze were also added to the recycling calculations. The provision for a staggered submission of new plans was abandoned in favor of a single submission date for all plans on July 1, 2004.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

The proposed regulations were published in the *Virginia Register* on November 6, 2000. The public comment period on the regulations ran from November 6, 2000 until close of business on January 5, 2001. During the written comment period, nineteen written comments were received. Public hearings were held on: December 6, 2000, at the James City County Government Center (Williamsburg, Virginia); December 12, 2000, at the West Central Regional Office of the Department of Environmental Quality (Roanoke, Virginia); and December 14, 2000, at the Northern Regional Office of the Department of Environmental Quality (Woodbridge, Virginia).

The Virginia Waste Management Board specifically sought comments on three items:

- The advisability of adopting the non-mandatory method developed by the USEPA to calculate the recycling rate as opposed to the method proposed in the amendment;
- Section 9 VAC 20-130-110.A called for the Solid Waste Management Planning units to be "divided into four groups per Schedule 1." Comments were sought on how best to divide the planning units into four equitable groups; and
- The advisability of deleting the last sentence in Section 9 VAC 20-130-120.C.6. This sentence concerns credits to the recycling rate, to be granted by the director, for the source reduction of any municipal solid waste or reuse of a principal recyclable material. The last sentence is: "The director shall not grant the credit if the minimum recycling rate of 25% is being achieved."

Comments received and their responses.

- There were changes suggested for several of the definitions. The definition of Supplemental Recyclable Materials was changed to include used oil filters and used antifreeze. However the other definitions were not changed since they are also included in the Virginia Waste Management Act or other solid waste regulations.
- There was a request that the USEPA methodology be adopted for calculating the recycling rate. However, the methodology for calculating the recycling rate in the regulation is very close to the USEPA method. Several local governments had suggested earlier that the Virginia methodology was superior and that local governments were used to it. The USEPA methodology has not been recommended.
- Some comments expressed concerns that the recycling rate was too high and others stated that the recycling rate was too low. However, the recycling rate is fixed by the authorizing statute and cannot be changed.
- There were questions about the provision that no permit for a solid waste management facility be issued until the local or regional applicant had an approved plan. As a result, the section was clarified for strict conformity with the statutory requirement.
- Comments were received objecting to the staggered submission date for the plans. The submission date was changed to a single date of July 1, 2004.
- Some comments requested state funding be made available to cover the cost of the reporting requirements and the cost involved in developing a new plan. However, solid waste planning is required by statute and the enabling statutes do not contain a provision for funding.
- There were no comments received concerning the question of granting credits to the recycling rate if the minimum recycling rate of 25% is being achieved.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

Changes to the regulations include the following:

Section 9 VAC 20-130-10. Definitions:

- Many of the definitions were changed to bring them into compliance with current statutes and regulations. The definition of "Supplemental Recyclable Materials" was changed to include used oil, automobile bodies, used oil filters and used antifreeze. Used oil and autobodies were removed from "Principal Recyclable Materials."

Section 9 VAC 20-130-40. Purpose of Regulations:

- In item 3, the language was changed to reflect that the recycling rate is to be maintained at 25%.
- A requirement restates a provision of the Code of Virginia at § 10.1-1411, withholding issuance of permits for solid waste management facilities after July 1,

2000 unless the local or regional authority has an approved solid waste management plan.

Section 9 VAC 20-130-70. Enforcement and Appeal:

- Changes were made to the language in order to conform to the Virginia Administrative Process Act (§ 9-6.14:11 et seq. of the Code of Virginia).

Section 9 VAC 20-130-80. Severability:

- The entire section was deleted since it is no longer needed

Section 9 VAC 20-130-110. Schedule for Plan Development:

- Completely revised plans must be submitted to the Department of Environmental Quality on or before July 1, 2004.

Section 9 VAC 20-130-120. Mandatory Plan Objectives:

- Item B states that the minimum recycling rate is to be maintained at 25% (a statutory requirement).
- Item C specifies the calculation methodology for the recycling rate, and the focus is on the amount of "Municipal Solid Waste" recycled.
- Used oil and automobile bodies were moved from "Principal Recyclable Materials" to "Supplemental Recyclable Materials" and used oil filters and antifreeze were added to "Supplemental Recyclable Materials."

Section 9 VAC 20-130-165. Waste Information and Assessment Program

- Item A states the reporting requirements for the Solid Waste Assessment Program – Form DEQ 50-25.
- As required under § 10.1-1413.1 of the Code of Virginia, permitted facilities must submit a report on solid waste managed in the Commonwealth. This information is integral to the planning process, and, therefore the regulations require a report be submitted by March 31 from all permitted facilities that treat, store or dispose of solid waste.
- Item D states that every city, county and town, or solid waste management planning region must submit a report on their recycling rate by April 30 of each year. This is the Locality Recycling Rate Report – Form DEQ 50-30, which is included in the regulation.

Section 9 VAC 20-130-175. Amendments to Plans:

- Rather than have a periodic update of the plan, a system of amendments is used.
- Major amendments require the same public participation (public hearing etc.) as required when the original plan was proposed.
- Minor amendments can be submitted directly to the department for approval.
- All amendments must be approved by the department prior to implementation.
- The two types of amendments are defined in Item B of this section.

Section 9 VAC 20-130-240. Administrative Procedures.

- The pertinent parts of this section were moved into Section 9 VAC 20-130-230, and the remaining parts of the section were repealed.

Form DEQ 50-25, Solid Waste Information and Assessment Program-Reporting Table, dated 6/6/00.

Form DEQ 50-30, Virginia Locality Recycling Rate Report, dated 4/2001:

- Used oil and autobodies were moved to the "Supplemental Recyclable Materials" category, and used oil filters and used antifreeze were also added to this category.

- A reference was made to the form at the end of the regulations. By doing that, it is possible to amend the form by notification of the public without changing the regulations themselves.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed amendments to these regulations will have a positive impact on family life in the Commonwealth by providing comprehensive and integrated solid waste management plans for every locality. These plans will help insure that inadequate solid waste management does not compromise public safety, health and the environment.